The State as Manager

The State is required to oversee the implementation of HMGP projects. Monitoring methods include site visits, updates via telephone, meetings, and progress reports.

The State should request regular progress reports from subgrantees to aid the State in monitoring and evaluating the projects. The State also will use these reports when preparing quarterly progress reports for FEMA.

This section describes some of the responsibilities of the State and subgrantee once the grant is approved.

Nondiscrimination of HMGP Grants

Like other disaster assistance programs, the HMGP must be administered in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status. The HMGP complies with Section 308 of the Stafford Act and Title VI of the 1964 Civil Rights Act. In implementing the HMGP, States and subgrantees will ensure that no discrimination is practiced.

Additionally, States and subgrantees must avoid conflicts of interest, both real and perceived. Subgrantees must comply with the procurement guidelines at 44 CFR 13.36. Among other requirements, Part 13 urges subgrantees to avoid situations where local officials with project oversight authority might benefit financially from the grant disbursement.

What Title VI and Section 308 Do

Section 308 of the Stafford Act and Title VI of the 1964 Civil Rights Act:

- Prohibits entities from denying an individual any service, financial aid, or other benefit on the grounds of race, color, religion, nationality, sex, age, or economic status;
- Prohibits entities from providing services or benefits to some individuals that are different or inferior (either in quantity or quality) to those provided to others;
- Prohibits segregation or separate treatment in any manner related to receiving program services or benefits;
- Prohibits entities from requiring different standards or conditions as prerequisites for serving individuals;
- Encourages the participation of minorities as members of planning or advisory bodies for programs receiving Federal funds;
- Prohibits discriminatory activity in a facility built in whole or part with Federal funds;
- Requires information and services to be provided in languages other than English when significant numbers of beneficiaries are of limited English-speaking ability;
- Requires entities to notify the eligible population about applicable programs;
- Prohibits locating facilities in any way that would limit or impede access to a Federally funded service or benefit; and
- Requires assurance of nondiscrimination in purchasing of services.

Those Required to Comply

All recipients of Federal assistance must comply with Title VI, including State and local governments and private non-profit organizations distributing Federal assistance.

TIP: See related topic, Environmental Justice, on page 8-7.

How to Comply

There is a broad range of activities that States can utilize to help ensure compliance with Section 308 and Title VI. Activities below are included only as examples.

States may:

- Set objective process/criteria for community applicants;
- Assist local communities with match requirement (either by seeking other resources or contributing cash); or
- Work with communities to ensure the program is made available without discrimination.

Subgrantees may:

- Set objective criteria for selecting homeowner and/or business beneficiaries.
- Ask local officials who may benefit personally from projects to recuse themselves from project related decisionmaking and oversight.
- Provide pamphlets and letters to prospective participants in other languages as appropriate; or
- Use a committee that represents various community groups to make decisions and plan outreach.

These mandates apply to discrimination throughout an agency, not just to actions involving the Federally assisted program. Therefore, if an agency receives any Federal financial assistance for any program or activity, the entire agency is required to comply with Title VI, not just that particular program.

TIP: For more information about Title VI, contact the State agency responsible for Title VI compliance.

Maintenance of the Project

The subgrantee or owner of the property is responsible for maintaining the project after the initial implementation. The FEMA grant is not intended to pay for future maintenance, such as mowing open space or ensuring hurricane shutters are operable. The State should encourage subgrantees to develop a maintenance plan that identifies the maintenance tasks, schedule, and budget (e.g., a clearance schedule and funding plan for a culvert improvement project).

Environmental Mitigation Implementation and Costs

Subgrantees will implement any environmental or historic preservation mitigation actions specifically required of them in relation to project approval. Environmental mitigation measures are conditions of the grant award. This means it is essential that the measures are carried out as agreed upon. Such measures include recordation or relocation of historic structures, Phase III archeological data recovery, protection for endangered species, etc. Such activities are treated as a project cost and are cost-shared.

FEMA or the State usually pays for reviews to determine if environmental requirements are met or if environmental mitigation is necessary. The cost of implementing such required measures are cost-shared project costs.

Hazardous Materials

Subgrantees may not use HMGP funds to purchase contaminated property. If a community is considering purchasing commercial or industrial property as part of an HMGP project, it should ensure that the owner provides information identifying what, if any, hazardous materials are on the property. Applicants should consult the sample Property Owners' Questionnaire on Hazardous Materials, included as Job Aid 11-1.

Job Aid 11-1

TIP: See Section 8 for more information on environmental considerations.

Before purchasing commercial or industrial properties, the community should require the owner to remove hazardous materials and containers. The owner must provide a clean-site certification from the State agency issuing such before the community can purchase any interest (including an easement for development rights) in the property. When the community purchases an easement for development rights only, the seller must agree to indemnify the State, FEMA, and the community for any liability arising from previous contamination of the property.

Presence of non-leaking underground storage tanks, septic systems, home heating oil tanks, and normal quantities of lead, asbestos, and household hazardous materials do not preclude use of FEMA dollars for acquisition. These costs should be addressed in the demolition budget.

Hazardous Materials (Continued)

If the State and FEMA determine that a Phase I environmental site assessment is necessary, the applicant, FEMA, or the State may conduct one prior to land purchase. The cost of Phase III environmental site assessment remediation plans, cleanup, and certification of the property are not eligible HMGP costs.

Compliance With Companion Program Criteria

When funds such as Community Development Block Grants are used to match HMGP grants, both programs' requirements apply to the whole project. The State, as grantee, is responsible for coordinating the various programs available within the State. It is important to include local program representatives.

Because HMGP is a very flexible program in terms of specific procedures, it is beneficial to coordinate approaches and schedules with other programs involved. The objective should be to make the process as simple and consistent as possible for the applicants and homeowners.

Insurance Require-ments

The following requirement applies to any project to alter existing structures that are sited within a Special Flood Hazard Area:

- When the project is implemented, all structures that will not be demolished or relocated out of the Special Flood Hazard Area must be covered by flood insurance to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular type of property, whichever is less[1]; and
- Insurance coverage on the property must be maintained during the life of the property regardless of transfer of ownership of such property.
- For example, elevation project owners must purchase and maintain flood insurance; an acquisition of agricultural easement project would require insurance on a remaining pole building; or in a project where hurricane shutters are installed on a building within the Special Flood Hazard Area, insurance is required even though it is not a flood mitigation project.

Mapping Implications

If approved HMGP projects will impact the local Flood Insurance Rate Map, the subgrantee is responsible for ensuring that appropriate map revisions are completed. Please contact your regional office for details.

[1]If an elevation or fill project results in a Letter of Map Revision (LOMR) indicating the structure is no longer located in the Special Flood Hazard Area, then insurance purchase is not required.

Standards and Codes

Alterations to existing structures will:

- Comply with all applicable State and local codes and ordinances;
- Comply with the applicable floodplain management standards outlined in 44 CFR Part 9 and 60.3 (e.g., the need to elevate structures to height at or above Base Flood Elevation, and the prohibition against elevation or fill in a V zone); and

44 CFR Part 9 and 60.3

- Provide protection for critical facilities to the elevation of the 500-year flood (the flood with a .2 percent annual chance of occurrence) as required by 44 CFR Part 9.

Standard Wage Rate Requirements

The Davis-Bacon Act of 1931 ensures that Federally contracted wages are paid at rates not less than those being paid on similar construction in the area. The Davis-Bacon Act applies only to work for which FEMA contracts directly, not to grantee-contracted work.

However, standard wage rates do apply to some U.S. Department of Housing and Urban Development (HUD) grant funds depending on the funding program and the type, scope, and size of the project. FEMA, the State, and subgrantees should coordinate with HUD field representatives to determine whether the rates apply to specific projects. If standard rates do apply, the additional cost is eligible under the HMGP at the same cost-share as the overall project.

Duplication of Benefits

FEMA and the grantee must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarified in 44 CFR 206.191.

44 CFR 206.191

Generally, duplication of benefits is only an issue for property acquisition projects where subgrantees pay pre-event value for damaged properties. However, it is possible that another form of assistance might pay for the same eligible activities that the HMGP does. HMGP recipients should not receive money from more than one source for the same activity.

Increased Cost of Compliance

Increased Cost of Compliance (ICC) insurance coverage provides for a claim payment to pay qualifying owners' costs to elevate, demolish, relocate, or floodproof (non-residential buildings only) after a flood. The maximum amount of Increased Cost of Compliance coverage available is $15,000. Because these are also eligible HMGP costs, the homeowner cannot receive HMGP funds for the same costs. However, if the insurance claim does not pay the total mitigation cost, an HMGP grant can pay the remainder. The Increased Cost of Compliance insurance claim payment would then be counted as cost-share. See section 13 for more information.

Program Delivery Sequence

Section 206.191 specifies a delivery sequence for disaster relief agencies and organizations. The sequence establishes both the order in which agencies provide assistance and the program with primary responsibility. Programs listed later in the sequence are responsible for ensuring that they do not duplicate assistance that should be provided by a program listed earlier in the sequence. The programs listed in 44 CFR 206.191(d)(2) are "primary programs:"

44 CFR 206.191(d)(2)

1. Volunteer agencies' emergency assistance;
2. Insurance (including flood insurance);
3. Temporary housing assistance (minimal repairs);
4. Small Business Administration and Farmers Home Administration disaster loans;
5. Individuals and Family Grand program;
6. Volunteer agencies' "additional assistance" programs; and
7. The "Cora Brown Fund."

Because the HMGP is not a primary disaster assistance program, it is not listed in the program delivery sequence and, therefore, would follow those that are listed.

In property acquisition projects, it is typical to package funds and benefits from several different sources along with HMGP funds. Because it follows the "primary programs," the HMGP must ensure that it does not deliver assistance that duplicates any of the previously listed sources.

Preventing Duplication of Benefits in an Acquisition Project

If a community is offering pre-event fair market value for homes recently damaged in a disaster, duplication may occur. This is because the homeowner may have already been compensated for the damage to the building by insurance, loans, or repair grants. Paying full pre-event fair market value also compensates the owner for the loss of value due to damage.

The following procedure prevents HMGP from duplicating benefits paid by primary providers to compensate the owner for loss to the home:

1. The subgrantee provides the State with a list of property owners who are participating in the property purchase program.

2. The subgrantee (with the advice and assistance of the State) establishes the fair market value of the property, as of a certain date. Usually this is the date prior to the disaster event. However, if the project is occurring separate from or more than 12 months after a disaster event, the current fair market value may be more appropriate. A potential duplication only exists if the subgrantee is paying pre-event value (or any value higher than current) for a damaged house.

3. The State and FEMA inform the subgrantee of the amount of repair assistance (from primary providers) provided to each property owner after the date for which the fair market value was established.

4. Property owners who have a U.S. Small Business Administration loan are required to repay the loan or roll it over to a new property at closing.

5. If insurance payments, minimal repair grants, Individual and Family Grants, and/or funds from any other sources were awarded for the purpose of making repairs to a structure after the fair market value date, the subgrantee reduces the purchase offer by the amount of the awards. Reductions are not taken, however, for amounts that the owner can verify with receipts were expended on repairs[2] or cleanup.

6. If the owner's insurance paid a claim that included an amount to reimburse the owner for their own labor to clean up after the event, the subgrantee will not deduct that amount from the offer.

7. If a homeowner received FEMA Emergency Minimal Repair grants and used the money for cleanup, repairs, or temporary rental accommodations and has receipts to document expenditures, no deduction is necessary. However, if the homeowner used the grant to make a mortgage payment or as a down payment on a new home, this is a potential duplication and the community deducts the amount from the purchase offer.

8. If the community is paying the post-flood (or current) fair market value of the property, no deductions for primary provider benefits are required.

[2] Subgrantees may not credit homeowners for the homeowners' own labor hours for repair work.

Not a Repayment of Repair Grants

Note that duplication of benefit deductions are not for the purpose of repaying grants made earlier in the delivery sequence. When the subgrantee identifies a potential duplicative benefit, the HMGP grant (or property purchase price) is reduced by an appropriate amount to avoid duplication.

Duplications and Cost-Share

Grants, loans, and insurance for the purpose of making disaster repairs are not originally intended for mitigation purposes. Therefore, they cannot be used to match HMGP grants even though they reduce the acquisition costs due to duplication of benefits. This includes regular claims under the National Flood Insurance Program.

The HMGP project cost-share is calculated after duplications are deducted.

Multiple Disasters and Duplications

If a house has been damaged by multiple disaster events, the subgrantee should determine for which disaster to check duplications. (See item number 2 on the previous page.) Subgrantee should include any event within the last 12 months and others, if they occurred close enough together to limit repairs.

Conditions for Post-Disaster Code Enforcement Projects

Extraordinary needs associated with enforcing local building codes during post-disaster reconstruction may include the performance of building department functions such as building inspections, and performance of substantial damage determinations under the National Flood Insurance Program. These activities may be eligible for HMGP funding if three conditions are met:

1. The State assesses existing building code and/or zoning and land-use management regulations to determine if they adequately address the identified natural hazard risks in the community. The State determines if the community:

   - Has adopted one of the three model U.S. building codes;
   - Has a floodplain management ordinance that meets the minimum requirements of the National Flood Insurance Program; and
   - Conforms to State-model or State-mandated building codes, as well as model or mandatory floodplain management requirements.

2. The State evaluates the building department to determine that its organization, funding, and enforcement and inspection processes are sufficient to ensure proper enforcement of all applicable laws and ordinances during normal operations.

3. The local community agrees to address any deficiencies identified in this evaluation as a condition of receiving the grant. This agreement can be a simple statement, attached to the evaluation. This agreement should include an implementation schedule that is mutually satisfactory to the State, the community, and FEMA. The agreement should include an acknowledgment by the community that failure to meet the agreed upon implementation schedule can result in the loss of all current and/or future building department assistance used to support post-disaster operations.

Mechanisms To Conduct Assessments

The State's assessment can be accomplished through various mechanisms. Any assessment should include a discussion of the community's compliance with the National Flood Insurance Program. Suggested approaches include (but are not limited to):

- Employing a mutual-aid agreement among communities to use other local building officials.
- Entering into a contractual agreement with a State or regional government entity that is well versed in building codes and proper administration of a building department.
- Entering into a contractual agreement with one of the three model building code organizations. All three model building code organizations have established programs for conducting similar assessments of building departments.
- Deploying FEMA mitigation staff that are knowledgeable of building codes and proper building department administration. Former local building officials can often provide the requisite knowledge.
- Employing the Hazard Mitigation Technical Assistance Program.

Allowable Costs for Grants to Building Departments

If the above conditions are met, extraordinary post-disaster code enforcement costs are eligible for up to 6 months. Extraordinary costs are the costs of the department in meeting disaster reconstruction needs after normal costs of the department are deducted.

TIP: See Section 12, Allowable Project Costs, for a discussion of post-disaster code enforcement costs.

Assistance After 6 Months

If, after 6 months, the community requests additional assistance, the State will conduct a needs assessment to determine if assistance provided to date has been effectively used and if additional assistance is warranted. Assistance beyond 6 months will be granted only in rare instances.

Acquisitions/ Relocations

Generally, HMGP-funded property acquisition projects consist of a community purchasing flood-damaged homes and either demolishing them or physically moving them to a new site outside of the floodplain. The purchased property is then maintained for open-space purposes.

While some communities may elect to develop a new site outside of the floodplain for participating residents to move to, FEMA encourages communities to opt for the simpler acquisition and structure removal model. These projects require only minimal environmental review, are considerably less expensive, and allow homeowners to determine where to relocate.

The guidance that follows is generally aimed at acquisition/structure removal projects.

TIP: Refer to the Acquisition Guidance for Local Communities for more details.

Basic Requirements

State and subgrantees must comply with additional requirements when using HMGP funding for open-space acquisition and/or relocation projects.

Subgrantees receiving assistance for a real property acquisition or building relocation project will enter into an agreement with the State, subject to FEMA concurrence. The agreement will provide assurances that:

- The subgrantee will inform prospective participants in writing that it will not use its eminent domain authority to acquire their property should negotiations fail, and property owners will voluntarily elect to participate in the program. The community may include an expiration date for this limitation in the letter.
- With stated exceptions, the property will be used in perpetuity for open space without future construction and in compliance with conservation requirements; and
- Existing buildings will be removed within 90 days of settlement.

The agreement should include the deed restrictions that will be attached to each property deed as Exhibit A.

See Job Aid 11-2 for Exhibit A. The FEMA Regional Director may concur on a State-local grant agreement that incorporates Exhibit A.

Job Aid 11-2

Property Appraisal and Negotiation

For each property identified for acquisition, the subgrantee should establish and document a fair market value. The value must be derived from a reasonable methodology that is consistently applied throughout the community. Methods may include:

- Independent appraisals (recommended);
- Opinions of value; or
- A formula based on tax assessments.

Communities may offer up to the pre-event market value of the real property. The State should coordinate with the subgrantee (community) in their determination of whether the valuation should be based on pre- or post-event market value. Post-event (current) market value may be the most efficient method if no damage has occurred to the properties in more than 12 months and they are currently occupied. All appraisals in a given community (i.e., HMGP project area) should be based on the same terms.

The community should ensure that all property owners are treated fairly and are offered an equitable package of benefits. As detailed above in the Duplication of Benefits subsection, the subgrantee must make certain deductions from the established pre-event fair market value before making a purchase offer to the property owner.

TIP: See pages 11-5 through 11-7 for further details on Duplication of Benefits.

National Flood Insurance Program Credits

The State has the option to allow communities to provide a credit to property owners with flood insurance. In this case, the subgrantee would increase the purchase offer by an amount equal to up to 5 years of flood insurance premiums actually paid by the current property owner for a National Flood Insurance Policy for structure coverage.

Notification of Acquisition Price

The acquiring entity (subgrantee) informs each property owner, in writing, of what it considers to be the fair market value of the property. The subgrantee may wish to set a time limit with the property owner for the validity of a purchase offer.

If several different entities or programs are acquiring property in the same area, property owners may find it confusing if different offers are made to area owners at different times. To avoid any negotiation difficulties or confusion, the local community should coordinate the release of appraisal information and purchase offers to property owners for the various programs.

Negotiating With Property Owners Who Purchased Damaged Property After the Event

The benefit of payment of pre-event value is only available to owners who owned the property during the event. If the current property owner purchased the disaster damaged property after the disaster declaration, then the community cannot offer the owner more than the post-event fair market value (i.e., the amount paid by the current owner for the damaged property or the current appraised fair market value, whichever is higher, in order to account for any improvements to the property or other reasonable property value increases).

Avoiding Provision of Assistance to Unlawful Residents of the U.S.

To comply with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), as subgrantees implement acquisition projects, they will ensure that only U.S. citizens and qualified aliens receive offers for the pre-event value of their damaged homes. A qualified alien is defined as someone from one of the following groups:

- Lawful permanent residents;
- Refugees;
- Asylees;
- Persons who have had their deportation withheld;
- Parolees admitted for at least one year;
- Aliens who have been present since before April 1, 1980; or
- Certain battered aliens and alien parents of battered children under certain conditions.

Subgrantees will ask all acquisition project participants (property owners) to certify that they are either a U.S. citizen or qualified alien. Subgrantees will offer participants who refuse to certify, or are not U.S. citizens or qualified aliens, no more than the appraised current fair market value for their property. Participants who refuse to certify, or are not U.S. citizens or qualified aliens, also may not receive additional non-URA relocation assistance described on Page 11-13.

Subgrantees may use FEMA Form 90-69D (Job Aid 11-7) to obtain certification from participating property owners. At the time of certification, the subgrantee will ask the property owner to show a form of identification (any identification displaying the signer's name will suffice). If the property owner applied for FEMA disaster assistance, a 90-69D will already be on file at FEMA and the subgrantee will instead request verification from FEMA through the State that a certification is on file.

Job Aid 11-7

Though subgrantees do not request property owners to display proof that they meet the qualified alien status, FEMA may later audit applications to verify the status.

TIP: Please see Page 11-25 for details on how to avoid provision of URA assistance to unlawful residents who are tenants of property to be acquired.

Additional Non-URA Relocation Assistance

There may be a shortfall between the amount the community pays an owner for his or her damaged residence and the cost of a comparable replacement home in a non-hazardprone location. The State may allow the community to provide owner-occupants the difference between the two amounts up to $22,500[1]. The subgrantee must demonstrate that all of the following circumstances exist:

- Decent, safe, and sanitary housing of comparable size and capacity is not available in non-hazardprone sites within the nearby community at the anticipated acquisition price of the property being vacated;
- The project would otherwise have a disproportionately high adverse effect on low-income or minority populations because project participants within those populations would not be able to secure comparable decent, safe, and sanitary housing; and
- Funds cannot be secured from other more appropriate sources such as housing agencies or voluntary groups.

Clear Title Required at Purchase

The subgrantee will conduct a title search for each property it plans to acquire with HMGP funds. The purpose of the title search is to ensure that the owner is really the titleholder to the property and that the title is clear (no one else has an interest in the property). This means that there are no mortgages or liens outstanding at the time of sale. In addition, there may not be incompatible easements or other encumbrances to the property that would make it either ineligible for acquisition or noncompliant with HMGP land use restrictions.

Subgrantee Takes Ownership

Depending upon the scope of the project, title to the property is treated in one of two ways:

- The subgrantee acquires or accepts the full title (preferred method); or
- The subgrantee acquires a conservation easement that runs with the property in perpetuity if more appropriate to the situation. The easement restricts use of the land to open space and the original owner retains title and the right to use the property for farming or quiet enjoyment.

The subgrantee takes possession (if applicable) at settlement. The deed transferring title to the property will be recorded with restrictions according to State law within 14 days after settlement and will run with the land in perpetuity.

[1]This dollar amount is consistent with the limits for relocation payments set by the URA.

Conservation Easements as an Alternative to Purchase of Full Title

A conservation easement allows the subgrantee to restrict use of the land, and remove associated structures not compatible with open-space use without taking full title to the property. Large parcels and agricultural land often are beneficial to the community for the agricultural value as well as the inherent open-space value of such land. In many cases, by purchasing a conservation easement, the community is able to retain these benefits, while restricting improvements or uses of this land which are not compatible with open-space uses.

Appraising the value of a conservation easement should take into account the loss of development rights on the impacted parcel. However, if the parcel will continue to be used for cultivation or other profitable recreational use, then this increases the benefit of the easement to the owner and should also be accounted for in the appraisal.

Conservation easements are intended to benefit a property owner who wishes to sell their house and restrict development, but wants to retain quiet enjoyment of the open space land.

In situations where the community is only acquiring a conservation easement to the property, they can provide the property owner an additional incentive to accept the offer by:

- Paying to physically relocate the damaged structure to a new site outside of the floodplain; or
- Paying the pre-event value of the structure and demolition and removal costs.

Treatment of Agricultural Properties

A community may include agricultural properties in its acquisition/relocation or elevation projects under Section 404. However, due to the large tracts of land and unique issues involved, these projects require special consideration. FEMA suggests that communities work with farm property owners on a case-by-case basis to negotiate an agreement (within the below options) that is acceptable to the farmer, the community, the State, and FEMA.

FEMA requests that the community take into consideration the cost of the project and the mitigation benefit to be gained in determining what type of offer to make to a farm property owner, as these factors will be considered by FEMA in its review for funding approval. All HGMP projects must be cost-effective.

Options for Agricultural Land Acquisition

The methods which can be used to deal with agricultural property are listed below. The option selected will depend upon the situation of the farmer and the property.

Subgrantee Responsi-bility and Deed Restriction

As a condition of receiving the grant, the State and the applicants agree to ensure that:

- The owner and all subsequent owners will dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices;
- The property acquired, accepted, or from which structures are removed will carry a permanent deed restriction providing that the property be maintained for open-space, recreational, or wetlands management purposes only;
- No new structures will be built on the property except as indicated below:
  - A public building that is open on all sides and functionally related to a designated open-space or recreational use;
  - A public restroom; or
  - A structure that is compatible with open-space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins;
- Any structures built on the property according to the third subparagraph above will be elevated or floodproofed to the base-flood elevation plus 1 foot of freeboard and meet applicable requirements of the National Flood Insurance Program floodplain management regulations at 44 CFR 60.3;

44 CFR 60.3

- The deed restriction must stipulate that no future disaster assistance for any purpose from any Federal source will be sought or provided with respect to the property (insurance claims such as National Flood Insurance Program and Federal Crop Insurance are not considered disaster assistance);
- After settlement, no person or group may make application for additional disaster assistance for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance;
- In fee simple transactions, the deed restriction must also stipulate that the subgrantee must obtain the approval of the State grantee agency and the FEMA Regional Director before conveying ownership of the property to another public agency or qualified private non-profit organization. Property transfer to private citizens and corporations will not be approved. All development rights in the form of an easement on the property must be retained by the subgrantee or other public agency; and
- The subgrantee accepts responsibility for monitoring and enforcing the deed restriction and/or easement language.

Removal of Existing Structures

The subgrantee takes possession of the property at settlement. The subgrantee must ensure that all structures are removed from the property within 90 days of property settlement and disposed of in accordance with applicable laws. The FEMA Regional Director can grant an exception to this requirement if extenuating circumstances exist.

Any relocated buildings will be placed on a site outside of Special Flood Hazard Areas or any other identified hazard areas, and at a distance at least 60 times the average annual erosion rate measured from an appropriate "erosion reference feature." The owner will ensure the building is brought into compliance with all applicable Federal, State, and local laws and regulations.

In certain instances, the demolition and debris removal related to acquired structures may be eligible for reimbursement under FEMA's Public Assistance program if the structures represent a health and safety hazard as a result of the disaster. Check with your Public Assistance Officer before assuming these costs are eligible under that program. If the costs of demolition do not qualify for Public Assistance, they are allowable costs under HMGP. If any parts of the structure are sold for salvage value, this amount reduces the total cost of the project before cost shares are calculated.

Managing Purchased Land as Open Spaces

The subgrantee must provide for the continued maintenance of the property once the initial debris removal, vegetative site stabilization, and new landscaping are complete.

FEMA encourages subgrantees to post a notice on the property indicating the open space designation.

In general, allowable open-space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of licensed wheeled vehicles which are easily moveable (except manufactured homes), unpaved, permeable parking lots, and buffer zones.

If communities wish, they may purchase the development rights to agricultural properties and allow the farmer to continue farming the land, but not to live there. Cultivation is an acceptable open-space use under 44 CFR 206.434.

44 CFR 206.434

Regardless of the type of new use of the land, no future Federal disaster assistance will be provided with respect to the property.

Procedure To Transfer Ownership

The subgrantee or other public property owner will seek the approval of the State grantee agency and the FEMA Regional Director before conveying ownership of the property to any other party.

All development rights to the property must be retained by the subgrantee or other public entity or qualified private non-profit conservation organization. The FEMA Regional Director will only approve the transfer of properties that meet the criteria identified above.

Environmental Review of Subsequent Activities

Future activities which occur on the acquired property after deed transfer, although required to be consistent with the authorized land uses, is not required to undergo National Environmental Policy Act evaluation because it is not part of the major Federal action as defined under NEPA.

Monitoring and Enforcing Deed Restrictions

In order to carry out tasks associated with monitoring, the subgrantee, State, or FEMA has the right to enter the parcel, with notice to the parcel owner, to ensure compliance with land use restrictions. Subgrantees may identify the open space nature of the property on local tax maps to assist with monitoring.

Whether the subgrantee obtains full title or a conservation easement on the parcel, the State will work with subgrantees to ensure that the property is maintained in accordance with land use restrictions. Specifically, the State may:

- Monitor and inspect the parcel every two years and certify that the inspected parcel continues to be used for open space or agricultural purposes; and
- Take measures to bring a non-compliant parcel back into compliance within 60 days of notice.

Only as a last resort, FEMA reserves the right to require the subgrantee to bring the property back into compliance and transfer the title and easement to a qualified third party for future maintenance.

Allowable Open Space Uses

The list below is a guide to open space use that addresses typical situations; however, the subgrantee and State should review every situation using the regulations, open space intent, and floodplain management principles. The local floodplain administrator should review all proposed use of acquired floodplain land.

Communities may re-use existing paved impervious surfaces for recreational uses, however, they should remove paved impervious surfaces beyond that directly required for such uses. Communities will use pervious materials where feasible for allowable uses, particularly trails. Examples include grass, hard-packed earth, porous paving material or tile systems, and graded gravel.

Communities may creatively salvage pre-existing structures on the acquired property. In some cases, the complete demolition of a structure may not be necessary; it may be possible to convert a closed-in structure with walls, such as a house, into an open pavilion with a concrete slab floor and posts supporting the roof.
The community may lease the property to private interests for allowable uses.

Allowable uses include:

1. Reforestation and planting of vegetation, agricultural cultivation, and grazing.
2. Picnic shelters, pavilions, and gazebos, with associated foundations, provided that the structure does not contain walls.
3. Restrooms are the only walled and roofed buildings that are allowed.
4. Tennis courts, basketball courts, ball fields, golf courses, miniature golf, open-air amphitheaters, other small-scale recreational courts, bike and walking paths.
5. Camping, except where adequate warning time is not available to allow evacuation.
6. Installation of signs.

Allowable Open Space Uses *(Continued)*

7. Simple agricultural structures (see Crop Storage facilities discussion below).
8. Unimproved, pervious (porous or permeable surface) parking. Communities may make accommodations for special needs, such as a limited area of paved parking for handicap accessibility.
9. Roads, driveways, camping pads limited to those necessary to serve the acceptable uses. Existing paved roads can be reused for these purposes.
10. Small boat ramps, docks, and piers to serve a public recreational use.
11. Drainage facilities intended to service on-site needs.
12. Construction activities, excavation, and other minor water control structures necessary to create areas for water detention/retention including wetlands restoration or restoration of natural floodplain floodwater storage functions.
13. Sewer, water, and power to serve the allowable uses. Sewer, water, and power line crossings, where there is no floodwater obstruction created and there are no other readily available locations for these systems.

Other uses determined by the State and the Regional Office to be consistent with the deed restrictions, grant agreement, and floodplain management requirements.

Unallowable Open Space Uses

The following uses are generally not allowed on acquired open space land:

1. The construction of flood damage reduction levees, dykes, berms, or floodwalls.
2. All walled buildings or manufactured homes, except restrooms. Re-use of pre-existing structures, unless all walls are removed.
3. Fences and all other obstructions in the floodway. Fences outside of the floodway must be designed to trap a minimum amount of debris.
4. Storage of inventory supporting a commercial operation or governmental facility, except for temporary storage in the open of wheeled vehicles. Long-term storage of very limited amounts of equipment, such as lawnmowers, necessary for maintenance of the acquired open space land is acceptable.
5. Cemeteries, landfills, storage of any hazardous or toxic materials, or other uses that are considered environmentally contaminating, dangerous, or a safety hazard.
6. Pumping and switching stations.
7. Above or below ground storage tanks.
8. Impervious parking. Impervious parking includes asphalt, concrete, oil treated soil, or other impervious material.

Unallowable Open Space Uses *(Continued)*

9. Use of off-site fill, except where necessary to avoid impacting on-site archeological resources. Grading using on-site soil is permissible.

10. Installation of septic systems or re-use of pre-existing septic systems, except to service a permissible restroom.

Any uses determined by the State, Region, or Director as inconsistent with the regulations or deed restrictions.

Crop Storage Facilities on Open Space

Some limited crop storage capacity on-site is necessary in order for the farmer to operate successfully. A limited exception to the development restrictions exists in order to allow limited construction of such storage facilities.

Job Aid 11-3

The exception applies only to projects in which the purchasing communities and the sellers agree to execute an easement using the recommended language in Job Aid 11-3: Exhibit B, which is attached to and recorded with the deed (or a more restrictive version). This language (and the exception) should only be used for the purchase of agricultural property. Other projects should use the more restrictive development prohibitions listed in 44 CFR 206.434.

44 CFR 206.434

Facilities allowed under the exception include simple agricultural structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, and limited to the following:

- General purpose barns for the temporary feeding of livestock which are open on at least one side;
- Pole-frame buildings with open or closed sides used exclusively for storage of farm machinery and equipment, and related agricultural items; and
- Steel grain bins and steel-frame corn cribs.

The Director of FEMA may approve, on a case-by-case basis, the erection of structures which do not meet the criteria above before commencement of construction. However, the structure must be constructed in compliance with the community's floodplain management ordinance, meet NFIP minimum requirements, and be compatible with open-space uses and floodplain management policies and practices.

Agricultural Properties and Future Disaster Assistance

For the purposes of the prohibition against disaster assistance for land or easements purchased with HMGP funds, benefits under the Federal Crop Insurance Act will be treated as described below.

Uninsurable Crops

Crops for which insurance is not available will not be eligible for any disaster assistance and are grown at the farmer's risk.

Payment through the Non-Insured Crop Disaster Assistance Program (NAP), 7 U.S.C. Section 1519, for damage to crops for which insurance is not available, is "disaster assistance," and will not be available to owners of open space-restricted land.

Insurable Crops

Benefits obtained through crop insurance programs offered under the Federal Crop Insurance Act, as amended, 7 U.S.C. Section 1501 et seq., are not considered "disaster assistance," and will be available to owners of FEMA-restricted properties.

Applicability of the URA

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (also known as the Uniform Relocation Act, or URA) mandates that property owners receive just compensation for their property and relocation assistance from Federally supported acquisition programs. This act also sets specific time limits and places other requirements on the acquiring agency.

49 CFR 24.101(a)

There are exceptions to most URA provisions, however, for voluntary transactions which meet the specific criteria found at 49 CFR 24.101(a). These criteria require that the acquiring agency (subgrantee) inform the property owner in writing:

- That it will not use its power of imminent domain to acquire the property in the event negotiations fail; and
- What it believes to be the fair market value of the property.

Additionally, the property may not be part of an intended, planned, or designated project area where all or substantially all of the properties in the area is to be acquired within specific time limits. To meet the criteria, no specific property must be acquired in order to satisfy the program needs.

Notice of Voluntary Nature of Project

Please note that this guidance on the URA is a summary of the requirements of 49 CFR Part 24. Those regulations supercede this guidance if any conflict is perceived.

Generally, most HMGP open-space acquisitions meet this voluntary exception because projects must be voluntary. FEMA recommends that the property owner and the subgrantee sign a Statement of Voluntary Participation (see Job Aid 11-4). This ensures that the property owner understands that he or she is not automatically eligible for additional relocation benefits beyond the purchase price of the property. The statement also protects the community if a dispute arises later. The community retains the statement in its records, but does not need to submit it to FEMA.

Job Aid 11-4

Mandatory URA Assistance for Displaced Tenants

Exceptions to this voluntary rule are all tenants and mobile home owners who rent homepads. Tenants who must relocate as a result of acquisition of their housing are entitled to Uniform Relocation Act relocation benefits (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services), regardless of the owner's voluntary participation. This includes owners of manufactured homes who lease the pad site.

Displaced Tenants

The amount of assistance the community must pay to the tenant is derived from 49 CFR Part 24, Subpart E. The Uniform Relocation Act states that an eligible displaced tenant is entitled to:

49 CFR Part 24 Subpart E

- Reasonable out-of-pocket (or fixed schedule) moving expenses; and
- Compensation for a reasonable increase in rent and utility costs incurred in connection with the relocation.

A tenant displaced from a dwelling due to a Federally funded acquisition project is entitled to a rental increase payment if:

- That tenant rents or purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date he or she moves out of the original dwelling; and
- The tenant occupied the displacement dwelling for the 90 days preceding the negotiations for acquisition of the property.

  (The initiation of negotiations is defined as the first formal indication that the subgrantee wants to purchase a particular property.)

Any tenant who occupied the dwelling prior to a disaster event is usually eligible. The exception to this is if the project negotiations are unrelated to a disaster event or begin so long after the event that the event is no longer a relevant factor. If the dwelling is reinhabited after the event, former tenants are generally not eligible.

Compensation for a Reasonable Increase in Rent

Compensation for rent increase is 42 times the amount which is obtained by subtracting the "base monthly rent" for the displacement dwelling from the monthly rent and average monthly cost of utilities for a comparable replacement dwelling, or the decent, safe, and sanitary replacement dwelling now occupied by the displaced person.

Base Monthly Rent

The "base monthly rent" for the displacement dwelling is the lesser of the average monthly cost for utilities plus the rent at the displacement dwelling as determined by FEMA, or 30 percent of the tenant's average gross household income. (The URA regulations define "tenant" as any individual, family, partnership, corporation, or association.)

A rental assistance payment may, at the subgrantee's discretion, be disbursed in either a lump sum or in installments. However, if any HUD programs are providing partial funding for the project, check to ensure lump sum disbursements are allowed.

Maximum Rental Increase Payment

The rental increase payment may not exceed a total of $5,250. Communities may and should exceed this limit in extraordinary circumstances, if necessary to ensure that a displaced tenant will be able to obtain and retain a decent, safe, and sanitary comparable unit outside of the high-hazard area.

Owners of Manufactured Homes

Mobile home owners who lease a homepad and who must relocate to a new homepad as the result of acquisition of their pre-disaster homepad are entitled to URA relocation benefits and replacement housing payments, regardless of the homepad owner's voluntary participation. A person who rents both the mobile home and homepad is considered a tenant and would be compensated using assistance outlined for tenants.

Displaced mobile home owners who rent their homepads are entitled to assistance detailed below in a) and either b) or c). However, in only rare cases may the combination of the two types of URA assistance exceed $22,500.

a) *Homepad Rental Assistance:* The displaced mobile home owner and homepad renter is entitled to compensation for rental and utility increases resulting from renting a comparable homepad and moving expenses as detailed in the section for tenants. Compensation for homepad rent increase is also 42 times the amount which is obtained by subtracting the "base monthly rent" for the displacement homepad from the monthly rent and average monthly cost of utilities for a comparable replacement homepad. The rental increase payment may not exceed a total of $5,250.

b) *Replacement Housing Assistance:* For URA purposes the displaced mobile home owner is considered to be involuntarily displaced from his or her residence due to the homepad owner (landlord) selling that property. Therefore, if the mobile home is purchased, the displaced mobile home owner is also entitled to replacement housing assistance to compensate for his or her need to find replacement housing. Compensation for mobile home replacement is equivalent to the amount which is obtained by subtracting the value of the displacement mobile home from the cost of a new replacement mobile home. In acquisition projects where the mobile homes are intact and are being relocated to new homepads, there is no difference. The replacement housing payment may not exceed a total of $22,500.

If the owner is also being compensated for homepad rental increase, then the combination of rental and relocation assistance may not exceed a total of $22,500.

c) *Costs To Move a Manufactured Home:* If the manufactured homeowner wishes to move their existing home to a new site, rather than sell it, those moving costs are eligible. The reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, anchoring the unit, and utility hook-up charges are included.

See Job Aid 11-5 for a sample Relocation Notice and Job Aid 11-6 for a Sample Log for Receipt of Relocation Notice.

Job Aid 11-5 and 11-6

Use of URA Payments

Relocation assistance payments for tenants are intended to ensure that these individuals are able to relocate to decent, safe, and sanitary comparable replacement dwellings outside the floodplain or hazard area. If a tenant chooses to purchase a replacement dwelling, the tenant may apply the amount of rental assistance to which he or she would be entitled towards the downpayment. Similarly, if a mobile home owner who rents a homepad chooses to purchase a replacement pad or lot, the mobile home owner may apply the amount of rental assistance to which he or she would be entitled towards the downpayment.

Avoiding Provision of URA Assistance to Unlawful Residents of the U.S.

A person who is an alien not lawfully present in the United States is not eligible to receive URA relocation benefits or relocation advisory services. The State may approve exceptions if unusual hardship to the alien's spouse, parent, or child who is a U.S. citizen or an alien admitted for permanent residence, would otherwise result.

Subgrantees will ask tenants who are potential recipients of URA assistance to certify that they are a U.S. citizen or are lawfully present in the U.S. Subgrantees will not provide URA assistance to participants who refuse to certify or are not a U.S. citizen or lawfully present.

Please refer to 49 CFR Part 24 as updated by the February 12, 1999 final rule change for detailed instructions to comply.

49 CFR Part 24

Hazardous Materials—Property Survey

Note: This is an optional form – used only if contamination is suspected.

NAME OF OWNER(S) [1]
[2]
[3]
PROPERTY ADDRESS: _____
TOWN: _____ STATE: _____ ZIP: _____
OWNER(S) ADDRESS: _____
TOWN: _____ STATE: _____ ZIP:_____
PHONE NUMBER OF OWNER(S): [1] (___) ___-_____
[2] (___) ___-_____
[3] (___) ___-_____

I (We), _____ as owner(s) of the above referenced property that lies within the jurisdiction of _____, in the State of _____, represent and certify that I (we) have used due diligence to determine, to the best of my (our) knowledge, that the description of the property described herein is accurate with respect to the presence or absence of contamination from toxic or hazardous substances. The term "property" refers to the physical piece of legally recorded land that is to be acquired.

. Is or was the property currently or previously used for governmental, commercial, light industrial, or industrial activities? ☐ Yes ☐ No

If yes, list specific type and nature.

2. Are there any Aboveground Storage Tanks (AST), Underground Storage Tanks (UST), or Leaking Underground Storage Tanks (LUST) present on the property? ☐ Yes ☐ No

If yes, list type of each tank, capacity, and condition.

3. Is there presently or has there been in the past any generation, treatment, storage, disposal, release, or spill of petroleum products, or solid or hazardous substances and/or wastes (this includes pesticides, hericides, or rodenticides), other than normal quantities of household substances? ☐ Yes ☐ No

If yes, list type of activity, substance, and quantity involved.

Hazardous Materials—Property Survey *(Continued)*

4.	Is there presently or has there been in the past a transportation facility on what is now your property? This includes parking lots, railroad yards, and railroad or roadway right-of-way. If yes, list type of facility or activity.	☐ Yes	☐ No
5.	Have you noticed any unusual odors or discoloration in your drinking water or on your property? If yes, describe the location, color, and odor of the water.	☐ Yes	☐ No
6.	For your property, is there presently or has there been in the past any: (A) environmental investigations conducted by Federal, State, local government agencies, or private firms; or (B) environmental or Occupational Safety and Health Administration (OSHA) citations or notices of violation? If yes, list the type of investigation or violation and the preparer or origin of the investigation or violation.	☐ Yes	☐ No
7.	Are there any drinking water wells or sewage septic tanks/systems on your property, or do any of the structures contain asbestos or lead containing materials? If yes, please list and describe.	☐ Yes	☐ No
8.	If there are any issues not raised by the previous questions, please attach an extra sheet describing the issues.	☐ Yes	☐ No

Hazardous Materials—Property Survey *(Continued)*

The property owner(s) acknowledge that this certification regarding hazardous substances and/or waste is a material representation of fact upon which the Hazard Mitigation Grant Applicant (local government) and other government entities rely upon to execute the property purchase. The property owner(s) certify that the information contained within this Hazardous Materials – Property Survey Form is a full disclosure of all available information to the best of their knowledge and that the owner(s) has exercised due diligence in obtaining all relevant information.

Preparer

Signature: _____ Date: _____

Typed or Printed Name:

Title:

Owner(s)

Signature: _____ Date: _____

Typed or Printed Name:

Signature: _____ Date: _____

Typed or Printed Name:

Signature: _____ Date: _____

Typed or Printed Name:

Exhibit A—Attached to Warranty Deed

For fee simple acquisition (acquiring title to land), use Exhibit A

FEMA Regional Director should concur on the State-applicant agreement, which must reference and attach Exhibit A.

The applicant shall reference Exhibit A in the deed and record it with the deed.

EXHIBIT A

In reference to the Deed between [property owner] participating in the FEMA acquisition project ("the Grantor") and [the Village/City/County], ("the Grantee"):

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space;

WHEREAS, the [State] has made such application and has entered into a FEMA-State Agreement dated [date] and herein incorporated by reference;

WHEREAS, the [Village/City/County], acting by and through the [Village/City/County] Board, has entered into a cooperative grant agreement with [State] dated [date] ("Grant Agreement"), [OPTIONAL include the following if the agreement is attached to the deed: and herein incorporated by reference];

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

***Exhibit A—Attached to Warranty Deed** (Continued)*

NOW, THEREFORE, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to the Stafford Act § 404 acquisition program:

   a. Compatible Uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved permeable parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room; or

      iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

      Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

   c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

   d. Transfer. The Grantee agrees that it shall convey any interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

      If title to the property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

      i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or

      ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the grant.

Job Aid 11-2

Exhibit A—Attached to Warranty Deed *(Continued)*

3. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject property is not maintained according to the terms of the grant, the Grantee, [State], and FEMA, its representatives, and assigns are responsible for taking measures to bring the property back into compliance.

   a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

   b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

   c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

      i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the property back into compliance with the terms of the grant; or

      ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with local law.]

Grantor's Signature	Date
Name (printed or typed)	
Grantee's Signature	Date
Grantee's Name	Grantee's Title

Job Aid 11-2

Exhibit B—Conservation Easement

For acquisition projects on large parcels and agricultural properties use Exhibit B.

1) FEMA Regional Director should concur on the State-applicant agreement which must reference and attach Exhibit B.

2) The applicant shall reference Exhibit B in the deed and record it with the deed.

[Community] Project No.: _____

Parcel No.: _____

EXHIBIT B

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended ("Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, Section 404 of the Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in real property, demolish or relocate structures on acquired property, and convert the property into open space;

WHEREAS, the [State] has made such application and has entered into a grant agreement with FEMA, date [date], and herein incorporated by reference;

WHEREAS, Grantee, acting by and through the [Community] Board, has entered into a cooperative sub-grant agreement with [State], date [date], and herein incorporated by reference;

WHEREAS, the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. § 206.434), and the grant sub-grant agreement require that Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

WHEREAS, [State] also has recognized the need to preserve the natural and open condition of the land and so authorizes conveyance of an easement to that end under the provisions of [the state law, cite];

WHEREAS, the [Community] Board has determined that it is necessary in order to promote the public interest for the purposes provided in the Stafford Act to acquire a conservation easement to this certain real property owned by the Grantor;

***Exhibit B—Conservation Easement** (Continued)*

NOW, THEREFORE, the Grantor, for and in consideration of the opportunity to participate in the FEMA-funded acquisition project, does voluntarily grant and convey to the Grantee a conservation easement in perpetuity over the property situated in the [Community], County of [county], State of [state] and described in Attachment A.

1. Purpose. This grant of a conservation easement is made for conservation purposes in order to restrict the use of the land to open space in perpetuity to protect and preserve natural floodplain values and to prevent any future use of the property that will significantly impair or interfere with the open space values of the property.

2. Terms. In order to accomplish the purposes of this easement and, pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44 C.F.R. 206.434), as they read now and may be amended in the future, the FEMA-State Agreement, and the Grant Agreement, the following conditions and restrictions shall apply in perpetuity and shall run with the land as an incorporeal interest in the property described in Attachment A:

   a. Compatible uses. The land shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other uses described in 44 C.F.R. § 206.434, as it reads now and may be amended in the future.

   b. Structures. No new structures or improvements shall be erected on the property other than:

      i. A public facility that is open on all sides and functionally related to the open space use;

      ii. A public rest room;

      iii. A structure that is compatible with the uses described in Paragraph 2(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure; or

      iv. Simple agricultural structures used exclusively for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including livestock, and limited to—

         a) General purpose which are open on at least one side and are for the temporary storage of livestock.
         b) Pole frame buildings with open or closed sides used exclusively for storage of farm machinery and equipment, and related agricultural items.
         c) Steel grain bins and steel frame corn cribs.

***Exhibit B—Conservation Easement** (Continued)*

[OPTIONAL include the following if applicable: provided that (a) the structure is the subject of approval by the County in accordance with the provisions of the [County Flood Plain Code, Section number et seq. of the County Flood Plain Code name, State, as they now read and as they may be amended in the future, and (b) NFIP requirements for wet-floodproofing (or dry-floodproofing or elevation, where practicable) are met, pursuant to 44 C.F.R. 60.3;]

Any structures built on the property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the property may be sought, nor will such assistance be provided;

d. Transfer. The Grantee agrees that it shall convey the easement only with prior approval by the Regional Director of FEMA of the transferee. The easement may be transferred only to someone other than the title holder and only to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements.

i. The Grantor may convey title, an easement, license, lease, or other interest in the land. Such conveyance, whether implied or express, shall be subject to all conditions and restrictions described herein, which shall run with the land in perpetuity.

3. Inspection. The Grantee and FEMA, its representatives, and assigns, including [State], shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of the easement.

4. Monitoring and Reporting. Every two (2) years on [date], the Grantee, through [State], shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of the easement.

5. Enforcement. If the subject property is not maintained according to the terms of the easement, the Grantee[State], and FEMA, its representatives, and assigns, are responsible for taking measures to bring the property back into compliance.

Exhibit B—Conservation Easement *(Continued)*

a. The Grantee will notify the titleholder of the violation in writing and advise the title holder that it has 60 days to correct the violation.

b. If the title holder fails to demonstrate a good faith effort to come into compliance with the terms of the easement within the 60-day period, the Grantee shall notify [State] of the violation.

c. The State shall enforce the terms of the easement by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

d. FEMA, its representatives and assigns may enforce the terms of the easement by taking any measures it deems appropriate, including but not limited to the following:

   i. Requiring transfer of the conservation easement in accordance with Paragraph 2d, or;

   ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.

6. Severability. Should any provision of this easement, or the application thereof to any person or circumstance, be found to be invalid or unenforceable, the rest and remainder of the provisions of this easement and their application shall not be affected and shall remain valid and enforceable.

The Grantee accepts the easement and acknowledges its obligations pursuant to the grant and sub-grant agreements and this document to monitor the use of the land and enforce the provision of the easement. Upon execution of this easement by the parties, the Grantee will officially record the easement.

Grantor's Signature	Date
Name (printed or typed)	
Grantee's Signature	Date
Grantee's Name	Grantee's Title

Statement of Voluntary Participation

THIS AGREEMENT is made and entered into this _____ day of _____, ____, by and between _____, hereinafter referred to as "Sub-grantee," by its authorized agent, _____, and _____, hereinafter referred to as "Seller." The parties agree as follows:

1. Seller affirms that he/she/they is/are the owner/owners of property located at -_____, hereinafter referred to as "property."

2. Sub-grantee has notified Seller that the Sub-grantee may wish to purchase property, and, if Seller agrees to sell, Seller must permanently relocate from property.

3. Sub-grantee has notified Seller that it believes the fair market value (FMV) of property, as of _____ is $_____ as determined by appropriate valuation procedures publicized and implemented by Sub-grantee.

4. Sub-grantee has notified Seller that Seller is not required to sell property and Sub-grantee will not use its power of eminent domain for the purpose of this acquisition project to acquire property if Seller chooses not to sell it.

5. Sub-grantee has notified Seller that if Seller agrees to sell property to Sub-grantee, such a transaction is voluntary. Consequently, Seller is not entitled to relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which are available to property owners who must sell their properties involuntarily.

6. Sub-grantee affirms that it has provided the notifications and explained the information described in the preceding paragraphs, and property identified above is not a part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

7. This Agreement shall expire on _____, unless Seller has voluntarily sold property to Sub-grantee by that date.

Property Owner Signature	Date
Property Owner Signature	Date
Sub-grantee's Authorized Agent Signature	Date

Job Aid 11-4

Sample Relocation Notice

[DATE]

RELOCATION NOTICE

for (MOBILE HOME COURT NAME) Residents

(ADDRESS)

(TOWN), (STATE)

On or before (DATE), each mobile home owner and resident in the (MOBILE HOME COURT NAME) received from (NAME), owner of (MOBILE HOME COURT NAME), a 90-day Notice to Vacate. As you were informed in that notice, (MOBILE HOME COURT NAME) signed an agreement to sell the real estate of the mobile home court to the Town of (NAME). This Relocation Notice supplements the 90-day Notice to Vacate.

Because Federal funds will be used toward the purchase of (MOBILE HOME COURT NAME) by the Town of (NAME) and, as renters, you will be involuntarily displaced, you are entitled to certain rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, also referred to as URA. The related regulations are the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice, 49 CFR Part 24.

Assistance Services

Each mobile home resident is eligible for reasonable relocation advisory services, which are being provided by representatives of the Town of (NAME). Contact persons for the Town of (NAME) are listed in the final section of this notice. IT IS VERY IMPORTANT THAT YOU KEEP IN CONTACT WITH YOUR ADVISORY ASSISTANCE PROVIDERS, so that they can provide you with the best possible relocation advisory assistance in relocating to a new home. They are available to assist you with reasonable relocation services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help you successfully relocate.

Sample Relocation Notice *(Continued)*

Moving Expenses

Each mobile home household will be eligible for moving assistance to be paid either on actual reasonable expenses based on receipts, or by a flat moving fee based on the number of rooms of furniture. Each household needs to choose one of these two moving expense options, but this decision does not need to be confirmed with the Town until after you have completed your move. The Town has made the determination that the number of rooms of furniture in each mobile home is four (4) rooms. Therefore, households that choose the flat moving fee option will receive $650.00 for moving expenses, as established in the "Residential Moving Expense and Dislocation Allowance Schedule" under 49 CFR Part 24.

Method of payment for households that choose the actual reasonable expenses option will be by check from the Town of (NAME) after moving expenses are confirmed by the Town. Method of payment for households that choose the flat moving fee option will be by check from the Town of (NAME) as soon as the Town has the funds available, but not longer than fourteen (14) days from the day that you confirm your choice of moving expense options with the Town. Please contact your Town of (NAME) advisory assistance providers for further assistance or if you have any questions or problems with moving.

Replacement Housing Payment

Each mobile home resident who has resided in the (MOBILE HOME COURT NAME) for at least the 90 days prior to [DATE], the date of real estate negotiations, may be eligible for rental assistance or home ownership assistance not to exceed $5,250, also referred to as a rent/utility differential. Eligibility for rent/utility differential is determined by the following factors: length of residency in the (MOBILE HOME COURT NAME), family income, average 12-month rent/utility costs at (MOBILE HOME COURT NAME) and expected monthly rent/utility costs in a comparable replacement dwelling. Utilities to be considered are electricity and natural gas. Method of payment for rent/utility differential will be by check from the Town of (NAME) in a lump sum after each of the determining factors listed above is confirmed. Part of this confirmation will include an inspection by the Town of (NAME) of the replacement dwelling to determine whether it is decent, safe, and sanitary. Please contact your Town of (NAME) advisory assistance providers for further details or if you have any questions or problems with relocating to a new home.

Sample Relocation Notice *(Continued)*

90-Day Notice

This Relocation Notice supplements the 90-day written notice that you received from (MOBILE HOME COURT NAME) on or before [DATE]. You will not be required to move permanently until ninety (90) days after a comparable replacement dwelling has been made available, unless the Town determines that continued occupancy of the mobile home court would constitute a substantial danger to health or safety. Please contact your Town of (NAME) advisory assistance providers for further details or if you have any questions or problems with relocating to a new home.

Appeals

Within sixty (60) days of each relocation assistance/URA determination, each (MOBILE HOME COURT NAME) mobile home owner or resident has the right to appeal URA determinations. Appeals must be in writing to (NAME AND ADDRESS OF HEAD LOCAL OR STATE OFFICIAL – MAY NOT HAVE BEEN DIRECTLY INVOLVED IN URA DETERMINATIONS).

Town of (NAME) Advisory Assistance Providers

IF YOU HAVE QUESTIONS OR NEED FURTHER ASSISTANCE, PLEASE CONTACT:

(NAME), Town Planner, or	Town Office (TELEPHONE NUMBER)
(NAME), Project Coordinator	Town Office (TELEPHONE NUMBER)
	Home (TELEPHONE NUMBER)

Sample Log for Receipt of Relocation Notice

Log for Receipt of

RELOCATION NOTICE

I have received a copy of the (DATE) Relocation Notice for (MOBILE HOME COURT NAME) Residents. I understand that my receipt of this notice serves to notify all persons in my household at the (MOBILE HOME COURT NAME).

Lot #	Print Name	Signature	Date
1			
2			
3			
4			
5			
Owner of Lot #5 Mobile Home			
6			
7			
8			
9			
10			
11			
12			
13 vacant lot			
14			

FEMA Form 90-69D
Declaration of Applicant

FEDERAL EMERGENCY MANAGEMENT AGENCY DECLARATION OF APPLICANT	O.M.B. No. 3067-0009 Expires October 31, 1999

You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form.

DECLARATION OF APPLICANT
Authority

Agencies of the United States Government are required by law to take reasonable actions to determine whether any individual seeking to obtain assistance (other than emergency assistance) is eligible.

In order to be eligible to receive FEMA Disaster Assistance and/or State Individual and Family Grant (IFG) Program Assistance, the applicant must be a citizen or qualified alien in the United States.

Please read the declaration carefully, sign sheet and return it to the Inspector, and show him/her a current form of identification. Please feel free to consult with an attorney or other immigration expert if you have any questions.

DECLARATION

I understand that information on this declaration may be provided to the Immigration and Naturalization Service (INS) for the purpose of audit, and I expressly consent to its release for that purpose.

I hereby declare, under penalty of perjury, that I may receive FEMA Disaster Assistance and/or IFG Program Assistance, if found eligible because (check one)

☐ I am a citizen or non-citizen national of the United States.
☐ I am a qualified alien in the United States.

Name of Applicant	Signature of Applicant		Date of Birth
Applicant's Address	FEMA Control Number	Disaster Number (DR)	Date

WARNING

18 U.S.C. Sec. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined, not more that $10,000, or imprisoned for not more than five years, or both.

PRIVACY ACT STATEMENT

(The following statement of purpose and uses is provided pursuant to the Privacy Act of 1974, Public Law 93-579)

The authority to collect information regarding your citizenship or immigration status is derived from Title IV of the Personal Responsibilities and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. The primary use of this information is by the FEMA Disaster Housing Program and the State IFG Program to determine your eligibility for assistance. Additional disclosure of this information may be made to the Immigration and Naturalization Service (INS) for audit of the data provided. Furnishing the information sought by this declaration is voluntary, but must be provided to obtain or retain a benefit. Failure to provide the information will result in disapproval of your request for housing or IFG assistance .

This request for information is not subject to coordination with or clearance of the Office of Management and Budget under the provision of chapter 35 of Title 44 of the United States Code.

PAPERWORK REDUCTION ACT

Public reporting burden for this form is estimated to average 2 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and submitting the form. You are not required to complete this collection of information unless a valid OMB control number is displayed in the upper right corner of this form.Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Paperwork Reduction Project (3067-0009), Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472. **NOTE:** Do not send your completed form to this office.

FEMA Form 90-69D, MAY 99